

REMARKS/ARGUMENTS

Applicant has reviewed the Office Action of October 2, 2006 and made amendments to the claims, as indicated hereinabove, to overcome the Examiner's objections and place the application in condition for allowance. No new matter has been added.

RESPONSE TO AFFIDAVITS:

Examiner indicates that the Declaration filed by the Applicant on August 15, 2006, regarding the limited battery life under 37 CFR 1.132, is insufficient to overcome the rejection of the claims based upon the combination of Altstatt (U.S. Patent 5,771,441) in view of Schotz et al (U.S. Patent 5,946,343). Since the Examiner indicated that some of the documents and data sheets were unreadable, a complete copy of the Declaration ("Declaration") with Exhibits is forwarded once again, as

EXHIBIT - I. Applicant apologizes to the Examiner for any inconvenience this may have caused.

Applicant respectfully requests the Examiner to reconsider his position that the Altstatt and Schotz's combination is operative. As pointed out by the Applicant in the Declaration, Altstatt's invention is based on an analog technology and is operated by a battery. (Para. 6 of Declaration). Schotz's invention is based on digital technology. (Para. 7 of Declaration). Applicant further stated that Altstatt cannot be combined with Schotz. (Para. 9 of Declaration). The calculations provided by the Applicant were basically hypothetical calculations, since Applicant asserted that Altstatt cannot be

combined with Schotz. So the Applicant's use 50 mA-h has no significance and none should be attached to since the calculations were hypothetical. Applicant believes that calculations by themselves provide no meaning since Alstatt cannot be combined with Schotz. Additionally, these calculations were incomplete since some of the data sheets were unavailable, as indicated by the Applicant.

Furthermore, Applicant's previously filed amendment dated March 14, 2006, which explains in further detail as to why the combination of Alstatt and Schotz would not provide a reasonable expectation of success, is incorporated in its entirety by reference. Applicant explained that:

"The office action provides that the combination of Alstatt and Schotz's '343 Patent teaches a battery powered digital transmitter. Applicant respectfully submits that a *prima facie* case of obviousness has not been made. More particularly, the combination of the battery-powered analog transmitter of Alstatt and the wall-powered digital transmitter of Schotz '343 would render Alstatt unsatisfactory for its intended purpose. Alstatt would suffer from a significantly reduced play time due to the power consumption of Schotz's numerous integrated circuits. Moreover, the Alstatt headphones for his portable device would be rendered too large because of the size of the integrated circuits used in Schotz.

For the same reasons of reduced play time and unwieldy headphones, the combination of Alstatt and Schotz would not provide a reasonable expectation of success. Accordingly, Applicant respectfully submits that a *prima facie* case of obviousness has not been made in this respect as well." (Page 15-16 of Amendment dated March 15, 2006).

Based on the foregoing, Applicant respectfully asserts that Alstatt and Schotz cannot be combined and even if such a combination is theoretically possible, such a combination would not provide a reasonable expectation of success.

Examiner further indicates that the second declaration ("Second Declaration") filed by the Applicant on August 15, 2006, regarding FSK and FHSS under 37 CFR 1.132, is insufficient to overcome the rejection of the new matter (See Exhibit 5 to

August 15, 2006 Response). The Examiner indicates that the CDMA overview provided by www.telecomspace.com discloses three ways to spread the bandwidth of a signal in CDMA. The three ways to spread the bandwidth of the signal, discussed on the website, are as follows:

1) Frequency hopping (FHSS). The signal is rapidly switched between different frequencies within the hopping bandwidth pseudo-randomly, and the receiver knows before hand where to find the signal at any given time.

2) Time hopping (THSS). The signal is transmitted in short bursts pseudo-randomly, and the receiver knows beforehand when to expect the burst.

3) Direct sequence (DHSS). The digital data is directly coded at a much higher frequency. The code is generated pseudo-randomly, the receiver knows how to generate the same code, and correlates the received signal with that code to extract the data.

Examiner asserts that the Applicant discussed the two ways to spread the bandwidth (i.e. FHSS & DHSS) in the Second Declaration and since the website discusses three, FHSS and DHSS are not inherent features of CDMA. Please note that the same website indicates that the CDMA was commercially introduced in 1995, became one of the world's fastest-growing wireless technologies, and it is a form of Direct Sequence Spread Spectrum communication. Applicant is not claiming that he invented FHSS, THSS, or DSSS. Applicant simply relied on a book entitled "Spread Spectrum Systems with Commercial Applications" by a well known author Robert C. Dixon's ("Dixon"), and the Applicant provided excerpts of some relevant pages to the Examiner to clarify the issue. The fact that the website indicated by the Examiner discusses three approaches to spread the bandwidth of the signal versus the two approaches pointed out by Dixon is irrelevant, and even if relevant, the discrepancy by

two known sources can be properly explained. For example, on page 47, Dixon explains that "Simple time-hopping modulation offers little in the way of interference rejection because a continuous carrier at the signal center frequency can block communications effectively." And, this may be the reason why Dixon has not elaborated on THSS. A copy of the relevant page(s) from Dixon is attached hereto as EXHIBIT - II.

The Examiner points out the requirements set forth in MPEP Section 2112, which are related to rejections based on inherency. The Applicant respectfully submits that the arguments presented by the Examiner with reference to inherency appear to be out of context. The Federal Circuit in *Kennecott Corp. v. Kyocera Intern., Inc.*, 835 F.2d 1419, 1422 (Fed.Cir.1987) held that the doctrine of inherency provides that "[b]y disclosing in a patent application a device that inherently performs a function, ..., a patent applicant necessarily discloses that function ... even though they say nothing concerning it." (emphasis added). To rely on this doctrine, the patentee must show that "the missing feature is necessarily present, and that it would be so recognized by persons of ordinary skill in the relevant art." *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1328 (Fed.Cir.2001). The same court further explained that to apply the doctrine of inherency, the party relying on the doctrine must prove that the challenged circumstance "inevitably occurs when the process steps ... are followed," *Kooi v. DeWitt*, 546 F.2d 403, 409 (Cust. & Pat.App.1976), or are "inevitable." *Application of Wilding*, 535 F.2d 631, 636 (Cust. & Pat.App.1976); see also *Kropa v. Robie*, 38 C.C.P.A. 858, 187 F.2d 150, 154-55 (Cust. & Pat.App.1951) ("Inherency

does not mean that a thing might happen one out of twenty times.... It must inevitably happen for the doctrine to apply."). In sum, the doctrine of inherency is satisfied where the patent "inherently discloses the invention ... so that one skilled in the art could produce the results claimed in the [patent] simply by practicing the [patent], i.e., the result flows naturally from the express disclosures" of the patent. *Rosco, Inc. v. Mirror Lite Co.*, 139 F.Supp.2d 287 (E.D.N.Y.2001).

As stated above, www.telecomspace.com website indicates that the CDMA was commercially introduced in 1995, became one of the world's fastest-growing wireless technologies, and it is a form of Direct Sequence Spread Spectrum communications. The Applicant has disclosed CDMA and explained how his invention works utilizing a unique codeword that spreads the signal spectrum. Paragraph 0014 of the parent application states that: "Modulation of the digital signal may be performed using direct sequence spread spectrum communication technology. A 64-Ary modulator 42 may be used for summation at summation element 46 with a transmitter code generator 44 signal to produce a high symbol rate, and a unique codeword that spreads the signal spectrum." (emphasis added). Paragraph 0016 of the parent application states that "This code division multiple access (CDMA) may be used to provide each user independent operation."

Based on the prosecution history, it is abundantly clear that the Applicant has disclosed the use of the CDMA technology to provide each user independent operation. The three ways to spread the bandwidth of the signal, as explained on the website, is simply a method to spread the bandwidth of the signal generated under CDMA. These

methods are sub-sets of CDMA protocol. When the Applicant disclosed CDMA and explained how his invention works utilizing a unique codeword that spreads the signal spectrum, the Applicant, in essence, has disclosed all the three ways (i.e. FHSS, THSS, and DSSS) that would be so recognized by persons of ordinary skill in the relevant art. If Applicant's invention utilizes CDMA protocol, as expressly disclosed in paragraph 0016 of the parent application, it is also apparent to one skilled in the art that there are only three ways to spread the bandwidth of a signal under the CDMA (i.e. FHSS, THSS, and DSSS) and therefore these three ways are inherent features of the CDMA protocol. Without these methods for spreading bandwidth, CDMA protocol cannot be implemented and therefore these result (i.e. methods to spread the bandwidth) flow naturally from the express disclosures of the patent application (i.e. ". . . (CDMA) may be used to provide each user independent operation." Paragraph 0016 of the parent application).

Based on the above, Applicant respectfully requests that the Examiner withdraws his objection to the Second Declaration and also his rejection relating to the new matter.

RESPONSE TO NEW MATTER REJECTIONS:

As noted by the Examiner, the specification is directed to a unique codeword for each individual user (paras. 0014 and 0016 of the parent application). As explained in the response to the Office Action dated August 15, 2006, Applicant believes that the "unique hop pattern" is not a new matter since it is part of CDMA. Applicant's

previously filed amendment dated March 14, 2006, which explains in further detail as to how unique hope pattern is created for each individual user, is incorporated in its entirety by reference. Nonetheless, in the interest of moving forward with the prosecution, Applicant has amended Claims 1, 4, 6, 7 and 10-13 without prejudice to replace the phrase "unique hope pattern" with "unique codeword."

On page 6 of the Office Action, the Examiner alleges that the terms and techniques disclosed in "A frequency shift keying (FSK) modulation/detection technique could be used given a frequency hopping spread spectrum (FHSS) system choice" sentence (FSK and FHSS) were not present in the parent disclosure or in the current application's disclosure and thus are new matter.

Applicant respectfully requests the Examiner to withdraw his objection to the new matter based on the arguments presented above under the *RESPONSE TO AFFIDAVITS* section. Applicant has discussed a 64-Ary modulation and demodulation techniques in paragraphs 0014 and 0017, respectively, in the parent application. These techniques can be used with a code division multiple access (CDMA) configuration. The parent application, paragraph 0016, specifically references that the code division multiple access (CDMA) may be used to provide each user independent operation. It is known in the art that CDMA covers FHSS (as well as direct sequence spread spectrum (DSSS) and time hopping spread spectrum (THSS)). Additionally, a 64-Ary modulation/detection technique broadly covers all types of modulation/detections of this type, including 64-Ary frequency shift keying (FSK). Applicant further attaches an article from the University of Birmingham, 3rd Month Report on the Optical CDMA

Networks ("Report"), as EXHIBIT - III, to clarify the issue raised by the Examiner. Pages 3 -5 of this Report provide a brief literature survey and elaborates on the concept of Spread Spectrum Communication, Direct Sequence Spread Spectrum (DSSS) and Frequency Hopping Spread Spectrum (FHSS) including *FSK*.

Based on the explanation set forth above, Applicant respectfully requests that the new matter rejection pertaining to "A frequency shift keying (FSK) modulation/detection technique could be used given a frequency hopping spread spectrum (FHSS) system choice" sentence be withdrawn.

Claim Rejections Under 35 U.S.C. §112

The rejection of Claims 1, 4, 6, 10, 12 and 13 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, is respectfully traversed.

As discussed above, in the interest of moving forward with the prosecution, Applicant has amended Claims 1, 4, 6, 10, 12 and 13 without prejudice to replace the phrase "unique hop pattern" with "unique codeword." Furthermore, Claims 7 and 11 have been similarly amended.

Based on the above, Applicant respectfully submits that amended Claims 1, 4, 6, 10 and 13 comply with the written description requirement of 35 U.S.C. §112, first paragraph and therefore respectfully requests that the 35 U.S.C. §112 rejection of Claims 1, 4, 6, 10, 12 and 13 be withdrawn.

The rejection of Claims 19-32, 43-53 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, is respectfully traversed.

Examiner alleges that the Claims contain the limitations directed to DSSS, which is not in the original specification nor inherent as alleged by Applicant. The Applicant has disclosed CDMA and explained how his invention works utilizing a unique codeword that spreads the signal spectrum. Paragraph 0014 of the parent application states that: "Modulation of the digital signal may be performed using direct sequence spread spectrum communication technology." The direct sequence spread spectrum refers to DSSS. (emphasis added).

Based on the above, Applicant respectfully submits that Claims 19-32, 43-53, are definite and comply with the written description requirement and therefore respectfully requests that the 35 U.S.C. §112 rejection of Claims 19-32, 43-53 be withdrawn.

In view of the above remarks, since Claims 19-32, 43-53 are not rejected under any cited references, Claims 19-32 and 43-53 are allowable.

The rejection of Claims 14 and 15 under 35 U.S.C. §112, second paragraph, is respectfully traversed.

Applicant has amended Claims 14 and 15 to correct the antecedent basis. Based on this, Applicant respectfully submits that amended Claims 14 and 15 comply with the requirement of 35 U.S.C. §112, second paragraph, and therefore respectfully requests that the 35 U.S.C. §112 rejection of Claims 14 and 15 be withdrawn.

In view of the foregoing amendments and remarks, Applicant respectfully requests withdrawal of the §112 claim rejections.

Claim Rejections Under 35 U.S.C. §102

The rejection of Claims 33 and 34 under 35 U.S.C. §102(e) as being anticipated by Lindemann (U.S. Patent Application 2004/0223622) is respectfully traversed.

Claim 33 recites

...at least one module adapted to audibly reproduce said processed CDMA signal, said CDMA communication configuration providing a user with independent audio reproduction free of interference from other users or wireless devices. (Emphasis added)

The above emphasized claim language is not taught or suggested by Lindemann. Lindemann does not address reproduction that is interference free. Furthermore, Applicant observes that Lindemann does not mention interference or address the problem identified by Applicant and thus Applicant's solution to provide *a user with independent audio reproduction free of interference from other users or wireless devices*. Instead, Lindemann is directed to digital wireless loudspeaker system and the delivery of signals to the speakers. Thus, Lindemann is not directed to a system capable of (1) providing a user with *independent audio reproduction*; and (2) *reproduction free of interference from other users or wireless devices*.

Claim 34 contains similar language. Thus, the remarks set forth above in relation to Claim 33 equally apply to Claim 34.

Accordingly, Lindemann cannot anticipate Applicant's Claims 33 and 34. For at least this reason, Applicant respectfully requests withdrawal of the rejection of Claims 33 and 34 by Lindemann under 35 U.S.C. §102(e).

Dependent Claims 37 and 41 depend directly or indirectly from independent Claim 33. Furthermore, dependent Claims 38 and 42 depend from independent Claim 34. These dependent claims contain all of the limitations of independent Claims 33 or 34, thus, any rejections under 35 U.S.C. §§102 or 103 should be withdrawn by virtue of their dependency from independent Claims 33 or 34.

Claim Rejections Under 35 U.S.C. §103

The rejection of Claims 1, 4, 6, 7 and 10-13 under 35 U.S.C. §103(a) as being unpatentable over Altstatt '441 in view of Schotz '343 and further in view of Schotz '839 and further in view of Rozin '844 is respectively traversed.

As to Claim 1, none of the references cited teach *a battery powered spread spectrum transmitter ... said battery powered digital transmitter converts an analog audio music signal from said analog headphone jack to a digital signal*, as recited in Claim 1.

Thus, any combinations of references when combined cannot produce such *a battery powered spread spectrum transmitter*, as claimed in Claim 1.

With specific reference to Altstatt, among other things, the Examiner acknowledges that Altstatt does not clearly teach or suggest:

[A] wireless digital audio music system for spread spectrum communication, said battery powered digital transmitter converts an

analog audio music signal from said existing analog headphone jack to a digital signal using an ADC in communication with an encoder...

Thus, the Examiner relies on Schotz for a digital transmitter 22. Furthermore, the Examiner relies on analog inputs 30A, 30B of Schotz for analog connection 12 and 18. Schotz '343 illustrates the transmitter receiving a plurality of audio inputs. In Applicant's invention, the transmitter is only coupled to the analog headphone jack. Applicant observes that Schotz '343 does not mention headphones or the use of an existing analog headphone jack or the use of headphones. Thus, neither Altstatt nor Schotz '343 teaches *a battery powered spread spectrum transmitter ... said battery powered digital transmitter converts an analog audio music signal from said analog headphone jack to a digital signal*. In Schotz '343, there is no teaching that the spread spectrum transmitter of Schotz '343 would operate if coupled to *said analog headphone jack* of Altstatt.

The other references Schotz '839 and Rozin '844 were not relied upon for such a teaching. Thus, the combination of Altstatt, Schotz '343, Schotz '839 and Rozin '844 does not teach the claimed invention of independent Claim 1 for at least the reason set forth above.

Additionally, Applicant observes that Schotz '343 uses PN codes which are for the different audio inputs and not individual users. Schotz '343 states that "the spread spectrum data is arrived at by outputting one of four different PN sequences depending upon the input data. This in effect performs the spread of the data." Thus, the PN sequences of Schotz '343 are not associated with individual users. Instead, the PN sequences of Schotz '343 are related to audio input data.

Schotz '839 does not teach CDMA or spread spectrum. Thus, Schotz '839 cannot provide the deficiencies related to the combination of Altstatt and Schotz' 343.

Claim 1 has been amended to change hop pattern to "codeword". The rejection relied upon Rozin for a hop pattern for individual users. Thus, in view of the amendments, the combination of Altstatt, Schotz '343, Schotz '839 and Rozin also does not provide a unique codeword for individual users.

Thus, the combination of Altstatt, Schotz '343, Schotz '839 and Rozin '844 does not teach the claimed invention of independent Claim 1 for at least this additional reason set forth above.

Claims 4, 6, 10 and 12 contain similar language. Thus, the remarks set forth above in relation to Claim 1 equally apply to Claims 4, 6, 10 and 12.

In view of the amendments and remarks, the rejection of Claims 1, 4, 6 10 and 12 under 35 U.S.C. §103(a) as being unpatentable over Alstatt '441 in view of Schotz '343 and further in view of Schotz '839 and further in view of Rozin '844 should be withdrawn.

Amended Claim 7, now recites *a code generator configured to create a unique codeword for each individual user*. As to the combination under 35 U.S.C. §103 as being unpatentable over Alstatt '441 in view of Schotz '343 and further in view of Schotz '839 and further in view of Rozin '844, none of the reference teach a *code generator configured to create a unique codeword for each individual user ...to provide high quality music for listening by a single user wearing the headphone receiver*.

None of the references teach (1) sending spread spectrum communications to a

headphone receiver; and (2) a unique codeword for each individual user. Therefore, any combination of Alstatt '441 in view of Schotz '343 and further in view of Schotz '839 and further in view of Rozin '844, cannot teach the claimed invention.

Independent Claims 11 and 13 contain similar language as Claim 7. Thus, the remarks set forth above in relation to Claim 7 equally apply.

In view of the amendments and remarks, the rejection of Claims 7, 11 and 13 under 35 U.S.C. §103 as being unpatentable over Alstatt '441 in view of Schotz '343 and further in view of Schotz '839 and further in view of Rozin '844 should be withdrawn.

The rejection of Claims 14-16, 39 and 40 under 35 U.S.C. §103(a) as being unpatentable by Lindemann (U.S. Patent Application 2004/0223622) in view of Benthin (US Patent 5,790,595) is respectfully traversed.

As remarked previously in relation to Claims 33 and 34, Lindemann does not mention interference or address the problem identified by Applicant and thus Applicant's solution to provide *a user with independent audio reproduction free of interference from other users or wireless devices*. Instead, Lindemann is directed to digital wireless loudspeaker system and the delivery of signals to the speakers. Thus, Lindemann is not directed to a system capable of (1) providing a user with *independent audio reproduction*; and (2) *reproduction free of interference from other users or wireless devices*.

The Examiner acknowledges that Lindemann does not teach fuzzy logic and thus relies on Benthin for a soft decisions in a receiver or during demodulation of a signal.

However, Benthin does not teach the deficiencies set forth above in relation to Lindemann. Thus, the combination of Lindemann in view of Benthin does not teach the claimed invention of Claim 14.

Claim 15 contains similar language. Thus, the remarks set forth above in relation to Claim 14 equally apply to Claim 15.

In view of the above amendments and remarks, the rejection of Claims 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over Lindemann in view of Benthin should be withdrawn for at least the reasons set forth above.

Dependent Claims 16 and 39-40 depend directly or indirectly from independent Claims 14 and 15. These dependent claims contain all of the limitations of independent Claims 14 or 15, thus, any rejections under 35 U.S.C. §103 should be withdrawn by virtue of their dependency from independent Claims 14 or 15.

Additionally, dependent Claims 17, 18, 35 and 36 depend directly or indirectly on independent Claims 15 or 14. These dependent claims contain all of the limitations of independent Claims 15 or 14, thus, any rejections under 35 U.S.C. §103 should be withdrawn by virtue of their dependency from independent Claims 15 or 14.

The rejection of Claims 17 and 18 under 35 U.S.C. §103(a) as being unpatentable by Altstatt '441 in view of Lindemann (U.S. Patent Application 2004/0223622) and further in view of Benthin, et al. (US Patent 5,790,595) is respectfully traversed.

Applicant observes that the rejection of dependent Claims 17 and 18 appears to rely on Altstatt as the primary reference while their corresponding independent claims

relies on Lindemann as the primary reference. Accordingly, the rejection is ambiguous.

Nevertheless, Altstatt, like Lindemann, does not teach a CDMA communications configuration providing a user with independent audio reproduction free of interference for other users or wireless device. Applicant observes that Benthin is only relied upon for fuzzy logic in a receiver. Hence, none of the references individually or in combination teach Applicant's invention.

In view of the above remarks, the rejection of Claims 17 and 18 under 35 U.S.C. §103(a) as being unpatentable by Altstatt '441 in view of Lindemann (U.S. Patent Application 2004/0223622) and further in view of Benthin, et al. (US Patent 5,790,595) should be withdrawn.

The rejection of Claims 35 and 36 under 35 U.S.C. §103(a) as being unpatentable by Lindemann (U.S. Patent Application 2004/0223622) in view of Benthin (US Patent 5,790,595) and further in view of Schotz '343 is respectfully traversed.

Schotz '343 is relied upon for a teaching of an analog output of 20 Hz to 20 KHz. However, Schotz '343 does not teach the deficiencies of Lindemann or the combination of Lindemann as modified by Benthin. Hence, the combination of Lindemann as modified by Benthin and Schotz '343 does not teach all the limitations of the base Claims (33 and 34) from which Claims 35 and 36 depend.

In view of the above remarks, the rejection of Claims 35 and 36 under 35 U.S.C. §103(a) as being unpatentable by Lindemann in view of Benthin and further in view of Schotz '343 should be withdrawn.

The rejection of Claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable by Lindemann (U.S. Patent Application 2004/0223622) in view of Schotz '343 is respectfully traversed.

Schotz '343 is relied upon for a teaching of an analog output of 20 Hz to 20 KHz. However, Schotz '343 does not teach the deficiencies of Lindemann previously described in relation to independent Claims 33 and 34. Hence, the combination of Lindemann as modified Schotz '343 does not teach all the limitations of the base Claims (33 and 34) from which Claims 37 and 38 depend.

In view of the above remarks, the rejection of Claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable by Lindemann in view of Schotz '343 should be withdrawn.

The rejection of Claims 41 and 42 under 35 U.S.C. §103(a) as being unpatentable by Lindemann (U.S. Patent Application 2004/0223622) is respectfully traversed.

Lindemann as modified by the Examiner does not teach the deficiencies described in relation to independent Claims 33 and 34. Hence, Lindemann as modified does not teach the claimed invention since Lindemann as modified does not teach all the limitation of the base Claims (33 and 34) from which Claims 41 and 42 depend.

In view of the above remarks, the rejection of Claims 41 and 42 under 35 U.S.C. §103(a) as being unpatentable by Lindemann should be withdrawn.

Conclusion

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No new claims have been added. Applicant believes that the application, as presently amended, is in condition for allowance. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the telephone number listed herein below to discuss any steps necessary for placing the application in condition for allowance.

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